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MR. PRINCE'S BILL

TO

REPEAL THE CHARTERS

OF

The Niagara and Detroit Rivers Railway.

MR. BLAKE'S SPEECH

BEFORE THE

SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL.

TORONTO:

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NIAGARA AND DETROIT RIVERS'

RAILWAY COMMITTEE.

MR. BLAKE'S STATEMENT.

[From the Toronto Leader, April 13.]

The speech delivered yesterday, by Mr. BLAKE, before the Niagara and Detriot Rivers Railroad Committee, was pronounced by several persons who listened to it, the best speech they ever heard delivered in this country. Immediately after its delivry Mr. BLAKE was complimented upon his effort by more than one member of the Committee. The speech, which will be found in full elswhere, speaks for itself.

The Committee on Col. Prince's Bill in respect to this Railway, met again on Tuesday, Hon. J. Ross in the chair.

Mr. BLAKE rose and addressed the Committee for a couple of hours. He said:—I appear, in this case, instructed by the Niagara and Detroit Rivers' Railway Company, of which Mr. Mercer is the President. On behalf of that Company I appear to protest against the extraordinary Bill now brought under the consideration of your honorable Committee. The gentlemen of the Mercer-Board are present also; and I appear as representing them in another capacity. The first capacity in which they appear is that of representatives of the Company, and the othe capacity is that of the undisputed and indisputable Stockholders of the Company. As their representative in both those capacities, I am instructed to offer the warmest opposition to the bill. I was not present when Mr. Foley appeared before you, Sir, the other day, and spoke in defence of the bill. But I have a report of his speech on that occasion which I understand is perfectly correct. On that occasion, I understand, Mr. Foley with praiseworthy prudence, did not allude to those occasions in which theLegislature would be justified in interfering with private vested rights. I would desire now, Sir, briefly to advert to the general principles on which alone such interference could be justified. It must, Sir, be a very serious and pressing necessity indeed which can induce any Legislature to interfere in the slightest degree with the vested rights of private individuals—to interfere with a claim capable of adjudication by the properly constituted tribunals of the land. Under any circumstances such an interposition must be an evil, tending as it does, in the first place to shake the confidence of the community in the efficiency of those tribunals, by rendering their acts liable to be over-ridden by the acts of the Legislature. And, in the second place, such interposition must be an evil because it tends to deteriorate the security of these very acts which the Legislature intended to confirm. Such interference must necessarily go to show that what Parliament thought itself authorised to do, it might consider itself authorised to undo. That great security properly belonging to anActof Parliament would begreatly reduced and immensely impaired, should the Legislature, without the amplest consideration and the most pressing necessity, attempt to interfere with vested rights by Acts of Parliament. Therefore, sir, I submit that when the promoters of this bill came before you and asked for an Act by which they might finally oust us from any position which we might possibly claim under the Acts of Parliament under which the united companies have heretofore been regulated; when they came before you in a case of this kind, with the full knowledge that we were engaged in the prosecution of an appeal to the properly constituted tribunals of the country in maintenance of our rights; knowing that we asked no interference of the Legislature, nor favor from the Crown or Parliament; knowing, too, that all we asked was simple justice—When, Sir, the promoters of the bill came before you under these circumstances, they should have made out a very strong case indeed to induce the committee to listen even for a single moment to any application they might make. And before such an application should be consented to, it should come in the guise of some great public necessity, which would sanction the overriding of private rights for the public good. There should also concur the clearest case of moral justice on the part of the applicant. In a case combining these two points—where private rights ought to be overridden for the public good, and where the case itself is one of the clearest possible moral justice—I admit the Legislature might interfere. But I deny that any such case has been shown by the promoters of the present measure. First of all, I would call attention to the case as made out by Mr. Foley. Condensed in a few words, it may be stated as follows: The McBeth Board, he says, was legally elected, at St. Thomas, by an enormous majority of votes. That Board is the legal Board. That Board besides being *de jure* is also *de facto* the Board of Directors. It has the confidence of the community. It has prosecuted the works, is all that is praiseworthy, and has let a contract to the lowest contractor on the best security. Now, assuming all that to be true, what I ask, can such a Board, under such favorable circumstances, possibly want in the Legislature? Under what

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pretence do they come here to ask you that the election of the MacBeth Board shall be declared good, right, proper and legal, when it is so already? Under what subterfuge do they presume to come here to snuff out what they call our paltry claims by an act of Parliament? I submit, Sir, that assuming everything he has stated to be proved, then he has, in legal language, virtually proved himself out of Court. He has proved the concurrence of a legal right with actual enjoyment. A case of necessity, or hardship on the community must be made out. In the present case the parties enjoy everything they could possibly enjoy, supposing the bill proved. I submit that Mr. Foley has showed no case of necessity here. They have all they want. We are sunk so low as to be wholly insignificant. Therefore I submit that, being needless, this bill must fail. Besides, as setting a precedent for needless interference with private rights the effect of the passage of the bill would be most injurious. But, taking the other side of the question, assuming that that Board was not properly elected; that we are in fact the proper Board, and then the effect of such a measure as the present becomes still worse. What was needless becomes positively unjust. For by the bill it was not sought to confirm what was just, valid and legal; but to confirm what was wrong, illegal and invalid, to confirm oppression and injustice. On either horn of the dilemma the promoters of this measure must find themselves impaled. Either the bill is needless or it is unjust. There is I may mention another general principle, applicable to such a measure, which I was happy to see noticed in the speech with which the promoters of the bill opened their case. It is the principle that the applicants should come before the Legislature only with the clearest possible case of moral justice; that they should come for relief with clean hands. That is a principle well recognised in a court of equity; and however applicable there, is still more applicable to the Legislature in a case of this kind, and is, indeed, a principle which should in no case be overlooked. That principle was recognised by Mr. Foley in his speech, when he challenged the fullest possible investigation into the proceedings of the Macbeth Board, with reference to the Morton contract. We accept that challenge. And now, to come to the facts as stated in the evidence of Mr. Smart, and set forth in the share lists with which the Committee have been furnished; for these, I may add, are the sources from whence we derive our information at present. At the election of the Macbeth board, in St. Thomas, the number of shares of the original Woodstock and Lake Erie Railway Company, voted on was 12,069,—12,000 of which shares were what is called the Rae stock. Of the original stock of the Amherstburg and St. Thomas Railway Company, there were some 20,000 shares voted on; of which 19,810 are stated by the share list, but not at present admitted by myself, to have been Wallace stock. It therefore appears that there were, according to the share-list, polled of the Amherstburg and St. Thomas Company shares, 220 shares other than Wallace stock, and of the latter 1910. Of the Woodstock and Lake Erie Company's stock, 69 were old stock, and 12,000 belonged to the Rae stock. Therefore, the total number of votes on the original stock, as stated by the share lists, was 289. Of the other stock, that of Rae and Wallace, there were 31,810 shares voted on. Now I do not know that on this occasion it is necessary for me to go into any particulars respecting the Wallace stock. It is matter of public notoriety. I may however state in a few words, that that stock was subscribed by a foreigner named Wallace; a man without, I believe, any means. The entry of the subscription was made in pencil, and the deposit itself was not paid at that time, nor for many months afterwards. This stock was assigned to Mr. Isaac Buchanan, as he says, in trust for the shareholders of the Great Western Railway. Mr. Buchanan farther says he never made any unconditional deposit on this stock to the credit of the Company. But he made a sort of deposit, of £50,000, which was transferred to the credit of the Amherstburn and St. Thomas Company; the Company having, however, previously passed a resolution that no portion of this sum should be expended by them without the consent of Mr. Buchanan. At this period there was not in the coffers of the Company more than £1,000 in addition to this stock. Having subsequently learned that the Company were going to violate their resolution in reference to this stock, Mr. Buchanan filed a bill and obtained an injunction in Chancery to prevent their disbursing any portion of this money without his consent. It therefore appeared that he had really a right to the control and disbursement of this £50,000. Subsequently, however, this eum was paid out to Mr. Buchanan by a cheque signed by the President of the Company, and the amount was by the Bank authorities transferred back to the credit of Mr. Buchanan. These are the main, material circumstances connected with this alleged deposit of £50,000, and when it was given and withdrawn, there was not more than £1,000 besides to the credit of the Company. It is at all events, clear that there never was any subscription of 10 per cent. on the stock, as had been alleged.. But assuming there had been such a subscription, then that identical deposit was paid back to Mr. Buchanan in express contravention of the act of incorporation. That same 10 per cent. was paid out to him; nothing has been since paid in. And therefore at the time of the election at St. Thomas there was not a single sixpence paid in on the Wallace stock.

Mr. Foley.—What was the name of the President who gave the cheque? Was it not Mr. Rankin?

Mr. Blake—No, it was not. Turn now to the Rae stock. As appears by the share lists—and I hope the committee will remember, that I have been deriving my evidence only from the statements of the supporters of the present bill—as appears by the share list furnished by the Secretary, Mr. Rae's stock was subscribed in the books of the Woodstock and Lake Erie Company, on the 18th of April, 1858. In what position was that company then? The deed of amalgamation, be it remembered, was dated in February, 1858. By that deed the Woodstock and the Lake Erie, and the Amherstburg and St. Thomas Company, were amalgamated into one, under the title of the Great South-Western Railway. The amalgamation under the deed was to take effect in March, 1858. That deed of amalgamation in all things not inconsistent with the act, became comfirmed by the act incorporating the present company. The Great South-Western Company was thus legally incorporated, and so stood in March, 1858. Yet nearly a month after the Woodstock and Lake Erie Company had by the deed of amalgamation lost its separate Corporate existence, we find a subscription entered in the books of that extinct Company, of 12,000 shares of Rae stock! And it was on those very 12,000 shares, that the Macbeth Board wsa elected. Of course the subscription is an utter nullity. No such subscription was ever made—it has never existed. But even assuming it to have been made, the payment was not made in time. This we shall be able to establish. By indisputable evidence we will prove that no deposit whatever was paid on that stock on the day of election. There was, it is true, some sort of conditional certificate hugger-muggered-up between the Bank of Upper Canada and Mr. Morton. But we shall be able to prove most clearly, that no deposit was made on the day of election. And even had I not been instructed to this effect, I

should still consider myself, as counsel, fully authorized to state the fact from the bill itself. That bill—so carefully drawn—provides that all subscriptions shall be null and void on which deposits of 10 per cent. had not been paid to Mr. Smart, or into some chartered bank or agency thereof, on or before the 16th October, 1858—the very day on which the certificate of the bank at Quebec was given. Surely, Sir, in the face of such evidence as that, I should be fully warranted—without another scrap of evidence—at once in assuming that until that period, at all events, no deposit which would be recognized by this committee had been paid.

The CHAIRMAN—That provision may have referred to the organization on the other side.

Mr. BLAKE—We never claimed and do not intend to claim any rights under the stock of which one farthing has been subscribed since the day of election.

The CHAIRMAN remarked that the certificate put in bore date the 5th Nov., not the 16th Oct. as had been stated.

Mr. BLAKE—That makes our case still stronger; for it is thereby evident that in asserting the certificate to be dated the 16th Oct., Mr. Smart must have been thinking of the statement made in the bill. As to the certificate it is worth nothing. Here it is:

"QUEBEC, 5th Nov.

"I hereby certify that Jas. Morton has deposited $120,000 with this bank on account of the Niagara and Detroit Rivers Railway, which amount is held by the Quebec Bank subject to his cheque."

That certainly was a curious deposit, as belonging to a Company. And when we found Mr. Smart telling us of this transaction so triumphantly, we may assume that if this is weak and conditional, the certificate from the Bank of Upper Canada is still worse. From the certificate I have read, it is quite clear that the next day, or even the next hour after its receipt, Mr. Morton might have checked out this deposit. There is another point to which I would advert. It cannot be said that the Board acting with Mr. Macbeth have been very scrupulous as to the nature of their transactions. Mr. Smart formed us that having some scruples about Mr. Morton's certificate from the Bank of Upper Canada, produced in the election, he presented it to some official. Now on the absence of any certificate I say we may fairly assume the worst,—that the Rae stock never was really subscribed for, nor a proper deposit ever made in respect of it. As to the Wallace and Rae stock, then, those votes must be struck off—as having been polled illegally and improperly with the full knowledge of the directors. They come here, on the assumption that these votes are good, to state that by 32,089 votes the Macbeth Board was elected. And taking the share list as my text, I will point out the circumstances under which their stock stands. Out of 32,089 votes, there are, I find, 31,810 bad votes. That is to say that of every 1,000 votes given for the Macbeth Board, 981 were bad ones! They had only 9 good votes in every 1,000! And these are the circumstances under which they come here seeking relief from the House. But even that is not the worst. These nine votes in every 1,000 can be considerably reduced. And here I must again revert to the old Woodstock and Lake Erie and Amherstburgh and St. Thomas Stock, voted on. First of all, with reference to the Woodstock and Lake Erie Company's Stock, I observed that some degree of indignation was manifested by Mr. Smart, the other day, when questioned as to his evidence in the Court of Chancery. But my object in asking him the question was merely to save the time of the committee, and prevent the necessity of recalling Mr. Smart. As Counsel I am instructed to state the evidence given was to this effect. The original shares subscribed by the Woodstock and Lake Erie Company which are the shares in which 69 votes were polled by the Macbeth Board, and on which an enormous majority of its Directors were qualified—these shares were 110 in number, representing so many hundred dollars.—These shares were subscribed by 11 gentlemen. One of those gentlemen fortunately happened to have £25 which he duly paid in, receiving back a certificate of deposit, on the express understanding and with the express agreement that the Secretary of the Company, W. L. Smart, should (as indeed, he subsequently did) immediately lend this £25 to one of the other eleven. This gentleman accordingly paid in the £25 and received his certificate of deposit. Whereupon the Secretary lent the £25 to the rest in rotation. (Laughter.) And thus out of one miserable £25 the 110 shares were paid. That was the only subscription paid in on the old Woodstock and Lake Erie Company's Stock. And therefore I take the liberty of striking off from the 32,089 votes, 69 other votes of the Woodstock and Lake Erie original stock. Now, with reference to the Amherstburg and St. Thomas Company's old stock. Of that stock the share list states that 220 shares were voted on. Thirty of these shares were voted on by Mr. Macbeth, and against these I have nothing to say. The remainder of the stock was voted on by Mr. Jas. Morton and consisted of 190 shares. I would first of all point out to the Committee with respect to 90 of the shares that it is not Amherstburg and St. Thomas Company old stock at all; but part of the Wallace stock. Before the deed of amalgamation had been perfected Mr. Morton procured from certain original subscribers of the Amherstburg and St. Thomas Company 150 shares of old stock. Shortly afterwards, Mr. Morton being the holder of these 150 shares and 20,000 shares of the Wallace stock—with respect to which, it may be remarked there are no marks in the stock book to distinguish that stock from the rest—assigned to certain gentlemen in a *bona fide* manner 90 shares to qualify them for being directors. That was, indeed, part of the agreement on which he received the transfer of the 150 shares. Now the Secretary has chosen to set down that Mr. Morton gave back 90 shares of Wallace stock. But that I submit to be totally incorrect. It would have been a gross fraud for Mr. Morton to have given these gentleman 90 shares of worthless stock for their good stock, and his own object was to qualify them for being directors. It must therefore be assumed that he gave them *bona fide* stock. I ask the Committee to assume that these 90 shares were good stock. And in this way I am able to reduce by 90 shares the 220 shares voted on by Mr. Morton. But they must receive yet another reduction. Mr. Rankin being the holder of 40 shares of good stock was requested by Mr. Morton to assign them to him for a temporary period; and Mr. Rankin having confidence in Mr. Morton acceded to the request. For this stock Mr. Rankin held and still holds the certificate of deposit. This is the understanding on which the 40 shares were assigned:—

SWORD'S HOTEL,
TORONTO, 8th October, 1857.

"MY DEAR SIR,—The sooner we can get quit of Mc-
"Leod and Park, as Stockholders in the Amherstburg
"and St. Thomas Railway Company, the better; and as
"it may have a good effect, in inducing them the more
"readily to consent to assign *their* stock, if they think
"you have ceased to have anything to do with the Com-
"pany, I wish you would transfer your stock to me, and
"I hereby promise to re-transfer an equal amount of
"stock to you, as soon as their transfers have been ob-

"tained, in order that you may have all the powers and "rights of a Stockholder before the new Board is "elected.

"I remain, my dear Sir,
"Yours very truly,
"JAMES MORTON."

To ARTHUR RANKIN, Esq., Sword's Hotel, Toronto.

I also produce the certificate of deposit:—

BANK OF UPPER CANADA AGENCY, }
CHATHAM, 12th of July, 1856. }

(£100 currency.)

This certifies that Arthur Rankin, Esq., has this day deposited the sum of one hundred pounds currency to the credit of the Amherstburg and St. Thomas Railway Company, payable to their order without the production of this certificate.

M. WEIR, Teller.

McLeod and Parke did assign their stock. But Mr. Morton never returned the 40 shares. He still holds them and is, in the eyes of any reasonable man merely a fraudulent trustee for Mr. Rankin. On these 40 shares so obtained and retained by Mr. Morton he presumed to vote at the election at St. Thomas. It was his duty to have resigned then, or to have voted on them under Mr. Rankin's orders. Had he so done, these shares would have been polled for our Board. These 40 shares must therefore be deducted from the amount polled for the MacBeth Board. With the 90 shares mentioned by me before these 40 swell the total to 130. Now the total number, other than Wallace stock' claimed to be voted on by Mr. Morton was but 190—from which if we deduct the 130, we find 60 shares to be the only shares in which Mr Morton was properly qualified to vote. Mr. MacBeth had 30 shares—so that out of the whole 32,089 shares claimed to be voted on by the MacBeth Board, but 90 votes or less than 3 in 1000 were properly polled in favor of the Board,— more than 997 out of every 1000 votes were bad! But we will look at this case from another point of view—with reference to the amount of stock held by one individual. Ostensibly Mr. Morton held 19,900 shares of Wallace stock, and 90 shares of good stock. Clearly he held under his own control 12,000 shares of Rae stock. This brings the amount of stock held by Mr. Morton to 32,010 shares out of a total of 32,089. In other words he held over 998 shares out of every 1000 voted on. The general public represented on this distinguished occasion by Mr. MacBeth held two shares or less in every 1000. Looking at the case from another point of view, however—looking at the really good stock, I am forced to admit, that after all, Mr. Morton did not hold such an enormously disproportionate amount. He only held twice as much as everybody else—and "every body else" meant Mr. McBeth, who held 30 shares while Mr. Morton held 60. The next position in which Mr. Morton appears is, that of a contractor for this railway. And I shall not, I think, be asking the committee to make any very strong or unwarrantable assumption, when I ask them to assume that Mr. Morton, in holding that number of votes, did in some measure control the election of directors. Mr. Morton, we find, qualified five of the directors out of the Woodstock and Lake Erie Company's Stock, and Mr. Macbeth two more, out the Amherstburg and St. Thomas Stock, on the morning of the election. When we see that these men, thus qualified and elected, within a very short period of their election gave a contract to Mr. Morton, I do not think I am making any very violent assumption in saying that Mr. Morton exercised complete control over the affairs of the company represented by these men—that in fact they were merely his puppets. But I will go further. I have been instructed that there was the deliberately pre-arranged and concerted plan that Mr. Morton should have this contract—that it was with that view these men got into office and held office, and that it is with that object they bring the present bill before the house. I am instructed to say these facts will be proved. It will certainly be a difficulty matter, for they must be proved out of the mouth of our adversaries—witnesses most unwilling But there is another element which goes far to show that this plan had been preconcerted, and that is,—it has been carried out in a manner so utterly regardless of the interests of the public and the Company itself. This contract, I am instructed, has been given to Mr. Morton at a price of $3,000,000 in excess of the amount tendered for by other contractors—but still I am instructed to say they will be proved—he is to have that much extra profit. In his address I see Mr. Foley has not attempted to deny that the contract has been let to Mr. Morton at a higher price than that at which the others contractors tendered. And the reason stated by the promoters of the bill for giving the contract of Mr. Morton under such circumstances is absurd on the face of it. It was given, they say, because the other parties tendering offered no security. They abstain from informing us, however, whether Mr. Morton gave any security. They abstain, too, from informing your committee that this was altogether an extra precaution in cases of a railway contract. The universal plan adopted is that the contract should be stringent and based on the security of monthly estimates and a large drawback. And, I would ask, on what principle could security be given? Suppose Messrs. Dickson and Street to have become sureties, what security could they have given equal to $15,000,000, the price of the road? But I am instructed that the security given by Mr. Morton bears an extraordinary and suspicious resemblance to his certificate of £30,000—and I have been even told that it consisted solely of drafts on Mr. Morton's consignee for whiskey in Montreal.

Mr. FOLEY—That is like the rest of the story.

Mr. BLAKE—Such, I am instructed, is the fact. I do not know that it was even a certificate from a bank. We have seen how such certificates can be framed in a very satisfactory manner in favor of depositors. But I am willing to assume it to have been a bank certificate, and that instead of being for £30,000 it was for £300,000.

Mr. FOLEY—It was neither the one nor the other.

Mr. BLAKE—I suppose it was much less than either; and unless Mr. Foley contradicts it, I shall continue to suppose so.

Mr. FOLEY—Nor was it either a bank certificate or a draft.

Mr. BLAKE—I say, supposing such to have been the case, they should have demonstrated that all they did was proper and correct; but they abstained from doing so. Supposing, however, his security amounted to £300,000, then we find them to have given the contractors a bonus of £750,000, for a security of £300,000. These explanations, continued the learned counsel, I have entered into, because Mr. Foley challenged the fullest and freest investigation.

Mr. FOLEY—Yes! and I still do so.

Mr. BLAKE—We can pick more holes in the contract; but shall wait for the evidence. Now assuming Mr. Morton's profit at the enormous sum stated, is not this another evidence showing the extreme control Mr. Morton had over this company? Certainly it is a small item compared with holding 998 shares out of every 1000, but still it is deserving of consideration. In respect to another enter-

prise, sir,—the greatest in the Province—the one over which you so worthily presided—we have heard remarks with respect to the large interest the contractors were said to have had in the stock—amounting to one sixth or one eighth of the whole; and that has been represented as detrimental to the interests of the company. But compare that interest with the interest of the contractor in this case. Compare one sixth of the stock to 998 out of every 1000 shares. Is it possible in such a case that the affairs of the road can be conducted properly? Can the contractor be kept within bounds—or can any restrictions be placed on a man holding 998 shares out of every 1000? To sum up my observations on this head I would ask the committee when they see these men, coming here with an impudent fabrication on their lips, as to the number of shares on which they qualified—declaring that these shares numbered 32,089, when 90 was the whole number—coming here to delude this committee and the House into the belief that all their statements were made in good faith—seeking to pass a bill which must inevitably confirm Morton in his contract and position as dictator of the company—in fact, as the company itself—when they see these men coming here with such unclean hands, I ask your honorable committee at once to say they will not touch pitch and be defiled. I think it would be a highly imprudent and improper act for any man or set of men to justify by the weight of their private influence such dealings as these. But when they come to ask you, sitting here in the position of judges, to report the facts to the highest tribunal in the Province—when they ask you in that capacity to authorise their schemes of corruption and plunder—I do think we should hardly be called on to make any very strong case against them. Now, the position in which the gentlemen and Company I represent, stand, is this. Certain clauses in the amalgamation act were passed by which provisions were inserted differing from those in the deed. Among these, one authorised the directors to open stock books for the Company and to pass by-laws, by which the deposits might be of any amount not exceeding 10 per cent. on the stock subscribed. There are certain other clauses in the act, which, to my mind, clearly point out that a discretion was given to the directors to nominate the exact amount of subscription, and that such sum should be the total amount of subscription required to constitute a stockholder to vote at the election of directots. Acting on this law, a majority of the members of the Board mentioned in the amalgamation deed, took the advice of Counsel as to the construction of the act. Under the advice of eminent counsel, Messrs. Eccles & Strong, these directors held a meeting in the interval between the passing of the act and the time appointed for the election of directors. A by-law was passed by which stock books were opened and two millions of stock subscribed—the shareholders paying in their subscription to the Treasurer, unconditionally and in the proper way. At the meeting for the election of directors in St. Thomas, however there was some confusion. But the election of our directors was proceeded with, as well on the ground of the £2,000,000 of stock subscribed, as on the fact of our having, exclusive of that stock, a majority of good votes—having in addition to the 2,000,000 shares, 100 shares of good Amherstburg and St. Thomas Company stock. The Macbeth Board, it will be remembered, had but 90 good votes, whereas, besides the 2,000,000 shares the Mercer Board had 100 shares of good stock which were voted on at that meeting. They had, thus, on that footing 10 votes more than the Macbeth Board. Beyond that, I would submit to the committee that of the 60 shares voted on by Mr. Morton, the 40 belonging to Mr. Rankin, who, as will be proved, was anxious and willing to vote on these shares in favor of the gentlemen he elected should be recorded in our favor. And irrespective of these 40 shares it will be remembered, we had a majority of 10 shares on the Mercer Board, and all its directors had fully paid up the required deposit. Of the Macbeth Board, we find five qualified by Mr. Morton and two by Mr. Macbeth on the morning of the election; and as I understand it ten of the members of this Board were qualified only as holders of this extraordinary Woodstock and Lake Erie stock—having but the small qualification to which I have referred to hold the position of directors in that Board. With reference to the act of Parliament under which the new stock was subscribed, I do not conceive I am called here to argue the legal question as to the construction of the act. I would merely say that the steps of the Mercer Board were taken under the Act and with the advice of Counsel, and by those steps they were ready to abide. We are willing to discuss the legal questions before the properly constituted tribunals of the country—but we must once for all decline to argue them before gentlemen who are not judges and with opponents who are not counsel at the bar. Assuming for a moment however that we had construed the Act wrongly, I beg to point out an important difference in our conduct under our construction from that of the Macbeth Board under their construction. We came to vote professing no other title than we could legally claim under our by-laws, and under the Acts of Parliament. We did not come with 12,000 votes stuck into the stock book of a Company, months after it had been blotted from the face of the earth; and with 20,000 other votes which were notoriously illegal. But we came in with a legal title. We did not come, professing to have paid 10 per cent., in some bogus, conditional manner. Nor did we as directors presume to sit and vote and propose ourselves for election on stock on which the required 10 per cent. deposit had not been paid,—as this Macbeth Board did. We did not presume to vote on bogus or fictitious stock. Our capital was legally paid up, also, and we actually represented a far larger amount of paid up capital than the Macbeth party—and on that ground we claim the consideration of the committee. Now with reference to the proceedings in Chancery, Mr. Foley, we admit, states that by taking these proceedings, that the other Board was defacto the Board. But we did not for a moment admit such a thing. We merely said that in assuming to advertise for tenders and conduct the undertaking generally,—they assumed a false position—were embarrassing the affairs of the Company, and effectually preventing our proceedings as the lawful guardians of the Company.

The CHAIRMAN enquired what parties had been served. Mr. Foley had stated that but one or two were served.

Mr. BLAKE—Not being the Solicitor I am unable to say. But I may state that it was not necessary that any other person than Mr. Macbeth should have been served. Mr. Macbeth had filed a demurrer to the bill and the committee will find that this very demurrer raises the question as to the validity of the stock and the rights of the parties, and that demurrer was set down by us to be argued.

The CHAIRMAN—When?

Mr. BLAKE—I cannot state exactly. But it was immediately after Mr. MacBeth put in the demurer.

The CHAIRMAN—Has the demurer been argued?

Mr. BLAKE—It was forthwith set down to be argued. But on the first day some difficulty arose as to the parties on the opposite side attending. Subsequently under the construction of the Court of Chancery some of the Judges were obliged to be absent on circuit for a considerable period. In the first place, however, the Christmas vacation intervened, and but a short period elapsed

between the end of that vacation and the period when the judges were obliged to go on circuit, which prevented the presence of a full bench. Now we shall be able to prove that Mr. Strong, who had the chief conduct of the case, was so ill from the beginning of January till after the judges had gone on circuit, that in that interval. he was utterly unable to attend to business. This will account for any delay which may have taken place. Besides I may mention that it is the universal practice of gentlemen of the profession, when engaged on any important case of this kind, to defer it even for months, till a full bench could be obtained, and the fact is that there has not on any occasion been a full bench since the vacation. Beyond this, by the practice of the Court, either party could have forced on the argument at any time, and consequently the delay was as much the fault of the promoters as of th Mercer Board. The learned counsel concluded his very able and learned address, by submitting that they were entitled to the most full and ample investigation before the committee, which if they received, he would, he was instructed, be able in the main to substantiate all his allegations.

Mr. FOLEY hoped the learned counsel was ready to proceed with the evidence at once.

Mr. BLAKE said he was ready, but felt rather exhausted to proceed with the examination just then.

Mr. FOLEY said that after such extraordinary and unfounded statements by counsel it would be only right to all parties that a prompt and immediate investigation should take place.

The CHAIRMAN thought it was not unreasonable that the committee should adjourn till next day, as they had been sitting some two hours already. Perhaps counsel would state what witnesses he intended to call?

Mr. BLAKE said it would be necessary to call Mr. Ridout, Mr. Christie, Mr. Rankin, Mr. Foley, Mr. McBeth, Mr. Walker Powell, Mr. Lapenotien, Mr. Barwick, Mr. Light, Mr. Morton and Mr. Elliott.

It was then arranged that Mr. Elliott should be first examined the following day.

Mr. W. L. SMART, seeing the Reporters busy taking notes, rose to deny most distinctly having ever been concerned in the transaction respecting £25, as had been alleged by counsel.

Mr. BLAKE acknowledged that he had been mistaken. Mr. Light, and not Mr. Smart, was Secretary at the period alluded to.

Mr. FOLEY said it was a singular fact that notwithstanding all the transactions of the Woodstock and Lake Erie Company, those very gentlemen, in whose behalf Mr. Blake was acting as counsel, had formed a connection with the parties belonging to that Company, and under that connection the amalgamation had been entered into. Hence, if any parties had been acting improperly, they were those on whose behalf the learned counsel appeared.

The committee soon afterwards adjourned till eleven o'clock to-day.